IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 347 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

THE REGIONAL DIRECTOR THE EMPLOYEES STATE INSURANC

Versus

JAIKRUSHNA HARIVALLABHBHDAS

Appearance:

MR SR SHAH for Petitioner
MR SANJIV DAVE for MR SI NANAVATI for Respondent No. 1
MR ST MEHTA APP for Respondent No. 9

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/04/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties. The petitioner seeks to challenge the order in Criminal Case No.316 of 1990 whereby the accused were discharged under Section 245 (2) of the Code of Criminal Procedure. The petitioner is the Employees' State Insurance Corporation, who had filed the original complaint against the present respondents Nos.1 to 7 for the alleged offence under Section 85-A of the Employees' State Insurance Act. It was alleged that the accused, as the directors of the respondent No.8 company, failed to deposit the contributions required to be deposited within the prescribed period and after obtaining the necessary sanction, the complaint was filed to prosecute the accused. The accused had made an application in the said criminal case for discharging them on the grounds stated in the application. The said application was heard and granted by the learned Metropolitan Magistrate, Court No.2, Ahmedabad on 5.9.1990. Challenging the said order, the present petition is filed. At the time of hearing, it is conceded that the case is squarely covered by the judgment of the Hon'ble Supreme Court in ESIC v. S.K.AGGARWAL (AIR 1998 SC 2676) as also the judgment of the Bombay High Court in GUPTA C.K. v. ESIC [1999 (2) LLJ 233]. It is observed by Their Lordships of the Hon'ble Supreme Court that even by reading the definition of "principal employer" under the ESIC Act, 1948 in Explanation 2 of Section 405 of the Indian Penal Code, directors of a company would not be covered by the definition of "principal employer" when the company itself owns the factory and is also the employer of its employees at the head office. The learned counsel for the respondents has relied upon the judgment of the Bombay High Court to point out that in the facts of the present case, directors do not automatically come within the definition of "principal employer" and, therefore, there was no justification for the prosecution of the respondents as the directors of the company. In view of

this legal position and the submissions of the respondents, the petitioner has not pressed this application. Therefore, the application is rejected. Rule is discharged with no order as to costs.

Sd/-

(KMG Thilake)

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